

APPENDIX

Exhibit 1: Declaration of Steve Pigeon

Exhibit 2: Declaration of Daniel B. Pollack

Exhibit 3: Declaration of Wesley D. Felix

Exhibit 1

Wesley D. Felix (6539)
Amber M. Mettler (11460)
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Attorneys for Plaintiff Masterfile Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

MASTERFILE CORPORATION,

Plaintiff,

vs.

MARTIN GALE, d/b/a THE GALE TEAM;
LAURIE GALE, d/b/a THE GALE TEAM;
and GALE SERVICES, P.C., d/b/a THE
GALE TEAM,

Defendants.

DECLARATION OF STEVE PIGEON

Case No. 2:09-cv-966

Honorable Dee Benson

I, Steve Pigeon, declare as follows:

1. I am over the age of 18 years, a resident of Toronto, Ontario, Canada, and am fully competent in all respects to testify regarding the matters set forth herein.

2. I am the President of Masterfile Corporation ("Masterfile"). I make this Declaration in support of Masterfile's Motion for Partial Summary Judgment on Damages. I have personal knowledge of the facts stated herein, and I would testify to those facts if called as a witness.

3. Masterfile is a stock photography agency that acquires, organizes, distributes, and licenses rights-managed and royalty-free images for commercial use in media ranging from print advertising to websites. Masterfile's images are acquired under exclusive contract from photographers and illustrators who are paid a royalty every time an image is licensed. Masterfile acquired legal title to the twenty-seven (27) rights-managed images (the "Images") that the Defendants used without authorization on their website located at www.galeteam.com (the "Website").

4. An important component of Masterfile's business is the concept of rights-managed images. Through developed business practices and technical infrastructure, Masterfile is able to track its rights-managed images and how they are being used around the world. This allows Masterfile to offer exclusive rights to clients without delay and without risking conflict between competing users.

5. Rights-managed images are often licensed to clients who require high quality images for publications, reports, advertising, Internet websites, and the like. When considering licensing a rights-managed image, clients often ask Masterfile to provide a history of prior uses of the subject rights-managed image, and for similar images from the same production shoot.

6. The ability to be told where, when and how a rights-managed image has previously been used is a primary reason that clients choose to use rights-managed images.

Rights-managed images are necessarily more expensive to license than other images offered by Masterfile, and the control of their use is of critical importance to Masterfile's business.

7. When Masterfile's rights-managed images are used without authorization it harms Masterfile in several important ways, including the following examples: (a) the unauthorized usage can cause Masterfile embarrassment and damage its reputation if such usage collides with an authorized use, because Masterfile may be expected to provide complete usage histories to any client at any time; (b) it may prevent Masterfile from licensing an exclusive use of that image after the infringing usage comes to light (infringing uses are recorded in our usage history system as soon as we learn of them and they remain in our system even if we do not collect payment for the infringing use). Exclusive uses are licensed at a considerable premium over non-exclusive uses; and (c) if an image has previously been licensed exclusively to another party, the infringing use could cause a claim for damages against Masterfile by the exclusive licensee.

8. Therefore, the potential damage to Masterfile due to an unauthorized use of its rights-managed images extends beyond the loss of financial compensation it would otherwise have gained through the licensing of the images; it includes damage to Masterfile's reputation as a reliable visual content provider.

9. On March 26, 2009, Masterfile sent the Defendants a notice of copyright infringement after discovering that the Defendants were using the Images without authorization on the Website. A true and correct copy of Masterfile's March 26, 2009 letter to the Defendants (with attachments) is attached hereto as Exhibit A.

10. Pursuant to Masterfile's Terms and Conditions governing the unauthorized use of Masterfile's images, Masterfile included a request for retroactive license fees that was three (3) times the regular license fees for the Defendants' use of the Images on the Website that

Masterfile was aware of at that time, which was that the Defendants had used twenty-three (23) of the Images for one year and four (4) of the Images for four years.

11. In response to Masterfile's discovery requests in this action, the Defendants indicated that they started using the 27 Images on the Website in April 2004. Masterfile is unaware of the exact date that the Images were removed from the Website, but it occurred after Masterfile notified the Defendants of the claim in March 2009 and before Masterfile filed its Complaint on October 28, 2009. Accordingly, the applicable usage period for calculating Masterfile's license fees for the Images is five (5) years. A true and correct copy of Defendants' Responses to Masterfile's Second Set of Discovery Requests is attached hereto as Exhibit B (see Defendants' response to Interrogatory No. 3).

12. Masterfile determines its pricing for rights-managed images based on thirty years of experience in licensing images to commercial clients around the world. Prices are adjusted from time-to-time according to market conditions and the competitive landscape for comparable products and licensing models.

13. The license fees for using a rights-managed image are not determined by the image itself, but instead are based on how the image is used and for how long. For example, the same fee applies for any rights-managed image that is used on the home page of a website for one year worldwide, irrespective of the content or size of the image.

14. It is Masterfile's policy to calculate retroactive license fees based on the regular fees in place at the time of issuing its claim, which in this case would be in March 2009. I have calculated the regular license fees which Masterfile would have charged for the Defendants' use of the Images on the Website at the time that Masterfile issued its claim to the Defendants in March 2009, had that usage been authorized for use on different pages of the Website for a period of five (5) years and they are as follows:


| Masterfile Image No. | Description | Website Usage | Rate |
|----------------------|---------------------|--------------------------|---------|
| 700-00008231 | House for Sale | Secondary page | \$2,010 |
| 700-00018138 | Woman/Monitors | Secondary page | \$2,010 |
| 700-00024739 | Business Meeting | Secondary page | \$2,010 |
| 700-00039068 | Couple Painting | Multiple secondary pages | \$3,510 |
| 700-00045593 | Woman in Kitchen | Secondary page | \$2,010 |
| 700-00045601 | Couple/House | Secondary page | \$2,010 |
| 700-00051387 | Family/House | Secondary page | \$2,010 |
| 700-00052510 | Woman Using Laptop | Secondary page | \$2,010 |
| 700-00055377 | Dollar Sign | Secondary page | \$2,010 |
| 700-00055948 | Woman on Phone | Secondary page | \$2,010 |
| 700-00057029 | House/Flower Bushes | Secondary page | \$2,010 |
| 700-00062640 | Wire Globe / Cursor | Secondary page | \$2,010 |
| 700-00063094 | Couple Unpacking | Secondary page | \$2,010 |
| 700-00063316 | Table and Chairs | Secondary page | \$2,010 |
| 700-00067230 | Farm and Field | Secondary page | \$2,010 |
| 700-00068371 | House and Garden | Secondary page | \$2,010 |
| 700-00069120 | Interior of Home | Multiple secondary pages | \$3,510 |
| 700-00069698 | Lightbulbs | Secondary page | \$2,010 |
| 700-00071900 | Trash Can | Secondary page | \$2,010 |
| 700-00072298 | Broom Sweeping Dust | Secondary page | \$2,010 |
| 700-00075424 | Flowers | Secondary page | \$2,010 |
| 700-00076323 | Hand & Lightbulb | Secondary page | \$2,010 |
| 700-00076415 | Dalmatian puppy | Secondary page | \$2,010 |

| Masterfile Image No. | Description | Website Usage | Rate |
|----------------------|--------------------|----------------|-----------------|
| 700-00077855 | Couple Working | Secondary page | \$2,010 |
| 700-00079231 | Living Room | Secondary page | \$2,010 |
| 700-00080396 | Gerbera Daisy | Secondary page | \$2,010 |
| 700-00083909 | Basset Hound Puppy | Secondary page | \$2,010 |
| Total: | | | \$57,270 |

15. Accordingly, the total regular license fee that Masterfile would have charged the Defendants for the same use of the Images would have been \$57,270.

16. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

DATED this 1st day of April, 2013.



Steve Pigeon

Exhibit A



Masterfile Corporation
3 Concorde Gate, 4th Floor
Toronto, Ontario, Canada M3C 3N7

416 929 3000 tel
800 387 9010 toll free
416 929 2104 fax
masterfile.com

March 26, 2009

VIA FEDERAL EXPRESS

Marty Gale
GALE TEAM
1533 Murray Holladay Road
Salt Lake City, Utah
USA, 84117

Dear Mr. Gale:

Re: Notice of Copyright Infringement – www.teamgale.com

Masterfile Corporation ("Masterfile") is in the business of licensing rights-managed images for commercial reproduction by clients around the world.

It has come to Masterfile's attention that you have published twenty-seven (27) of Masterfile's images on the above noted website. A copy of the images and a printout of the respective pages on your website are attached to this letter for your reference.

The images are represented exclusively by Masterfile and registered in the Copyright Office of the United States Library of Congress. You may verify Masterfile's ownership by visiting www.masterfile.com and entering the respective image code in the search engine.

Masterfile can find no reference to these images having been licensed for reproduction on your website. The usage above directly violates Masterfile's and the artist's exclusive rights to reproduce, adapt, display, distribute, and/or create derivative works. Be advised that any entity that violates these exclusive rights of the copyright owner is an infringer of the copyright and is thus liable, regardless of prior knowledge of the unauthorized usage. Also note, the *Copyright Act* provides for individual liability for all those associated with the infringement as well as corporate liability.

Rather than initiate a legal action for copyright infringement, Masterfile is proposing, on a without prejudice basis, the following settlement: **Masterfile is willing to arrange for a retroactive license in accordance with Masterfile's terms and conditions at www.masterfile.com, provided that you: (a) cease and desist from any and all uses of the images; and (b) pay the retroactive license fee noted in the enclosed claim within ten (10) days. Please note that you must return the enclosed stamped claim along with your payment in order for Masterfile to conclude this matter. If you do not comply, Masterfile will initiate a lawsuit for copyright infringement without further notice to you.**

Subject to your payment of the retroactive licensing fee, you may inquire about continued use of our images for future promotional purposes. Please contact me immediately to discuss arranging a license in this capacity.

Masterfile treats copyright infringement as a serious matter. As such, Masterfile makes every effort to ensure its intellectual property is protected and it pursues any possible cases of improper use. Masterfile is hopeful that this matter can be resolved quickly and amicably. Contact received by the due date will be regarded as a gesture of

Masterfile

good intent. Please note that nothing in this notice should be construed as a waiver of any of Masterfile's rights, remedies or protections under law.

The information on this notice of copyright infringement is accurate and under the penalty of perjury, the undersigned is authorized to act on behalf of Masterfile with respect to this matter.

If you have any questions, kindly contact me without delay.

Yours truly,

COPY

Lisa Dempsey
Copyright Compliance Officer
ldempsey@masterfile.com

LD/tg
Encl.

MASTERFILE CORPORATION

FREQUENTLY ASKED QUESTIONS

Who is Masterfile Corporation?

Masterfile is a stock image agency/library. We acquire, organize, distribute and license images for commercial use in media ranging from print advertising to websites. Our images are acquired under exclusive contract from professional photographers and illustrators who are paid a royalty every time an image is licensed. Our clients include advertising agencies, designers, publishers, multimedia producers and corporations throughout the world.

If I remove the image(s), is the matter resolved?

No. When a rights-managed image(s) is used without a license, the immediate removal of the image(s) is critical. Removing the image mitigates your liability; however this does not completely resolve the matter. The use of Masterfile's image(s) requires appropriate licensing covering any and all uses. Payment of an applicable retroactive license is required to resolve the matter completely.

What if I hired someone to create my website?

We have no record that the image(s) was licensed for the noted use. Your use of the image(s), without a valid license from Masterfile, constitutes copyright infringement. According to the *Copyright Act*, it does not matter who designed your website or that there was no intention to commit copyright infringement. You, as the end user, are liable for the infringement and have a responsibility to pay the appropriate retroactive licensing fees for use of the image(s). Masterfile will not be contacting the designer in an attempt to resolve this issue unless he/she contacts Masterfile directly and agrees to take responsibility for the unauthorized use. Masterfile is not privy to the agreement that you may have had with the designer so it is your responsibility to work with the designer if you believe he/she is responsible.

What if I purchased the image(s) from a subscription service or online as part of a template?

Masterfile is the exclusive representative of the image(s) in question. This means that the image(s) cannot be licensed by anyone else. According to the *Copyright Act*, as the enduser, you are ultimately responsible for ensuring that you have obtained the appropriate licensing or rights to use the image(s). This means that if you purchase or acquire images from a subscription service or a website that provides templates, you are still liable for copyright infringement if that company did not properly license the image(s) for your use.

What if I didn't know that the image(s) had to be licensed?

Your use of the image(s), without a valid license from Masterfile, constitutes copyright infringement. According to the *Copyright Act*, it does not matter that there was no intention to commit copyright infringement or that you didn't know the image was copyright protected and needed to be licensed. You, as the end user, are liable for the infringement and have a responsibility to pay the appropriate retroactive licensing fees for use of the image(s). Unfortunately, your lack of knowledge does not excuse or dismiss your unauthorized use, nor does it waive your obligation to pay the amount requested in the claim for copyright infringement.

What if I found the image(s) on the internet and there was no copyright notice?

Just because an image is displayed on the internet does not mean that it is in the "public domain". The public domain is the field of works in which copyright has expired or where the copyright owner has made a clear declaration that the work is not subject to copyright. The image(s) in question is a rights-managed image(s) represented exclusively by Masterfile. The use of rights-managed images represented by Masterfile requires a license covering each and every use. The fact that there may not have been a copyright notice, depending upon where you found the image, does not mean that there is no copyright protection.

masterfile.com

CLAIM

2009 Mar 20

Rep: Legal Compliance

1. This is not a license. No reproduction rights are granted or implied herein. Rights to reproduce an image may only be acquired subject to the terms of a written license from Masterfile.
2. If this Claim Invoice is issued pursuant to a prior transaction between the parties, refer to the "Terms of Loan" and/or the "General Terms and Conditions of Invoice/License" set forth in separate documents previously delivered to the client.
3. This invoice is due and payable upon receipt. Interest of 2% per month will be charged after 30 days.
4. This invoice is subject to the laws of the Province of Ontario. Jurisdiction shall be in the municipality of Metropolitan Toronto.

masterfile.com

CLAIM

2009 Mar 20

Rep: Legal Compliance

| IMAGE CODE | DESCRIPTION | RELEASE* | SIZE | ARTIST | | RATE |
|--------------|---------------------|----------|-------------|-----------------------|-------|---------|
| 700-00024739 | Business Meeting | Y/N | 1x sec page | MTPA Stock | US \$ | 2010.00 |
| 700-00057029 | House/Flower Bushes | N/N | 1x sec page | Didler Dorval | US \$ | 2010.00 |
| 700-00062640 | Wire Globe/Cursor | N/N | 1x sec page | Bill Frymlire | US \$ | 2010.00 |
| 700-00063094 | Couple Unpacking | Y/Y | 1x sec page | Dan Lim | US \$ | 2010.00 |
| 700-00068371 | House and Garden | N/Y | 1x sec page | Gloria H. Chomica | US \$ | 2010.00 |
| 700-00071900 | Trash Can | N/N | 1x sec page | Tom Collicott | US \$ | 2010.00 |
| 700-00072298 | Broom Sweeping Dust | N/N | 1x sec page | Jean-Yves Bruel | US \$ | 2010.00 |
| 700-00075424 | Flowers | N/N | 1x sec page | Gloria H. Chomica | US \$ | 2010.00 |
| 700-00076323 | Hand & Lightbulb | N/N | 1x sec page | Boden/Ledingham | US \$ | 2010.00 |
| 700-00077855 | Couple Working | Y/N | 1x sec page | Andrew Olney | US \$ | 2010.00 |
| 700-00080396 | Gerbera Daisy | N/N | 1x sec page | Michael Mahovich | US \$ | 2010.00 |
| 700-00083909 | Basset Hound Puppy | N/N | 1x sec page | Allison Barnes Martin | US \$ | 2010.00 |

[illegible]

GENERAL TERMS OF CLAIM INVOICE

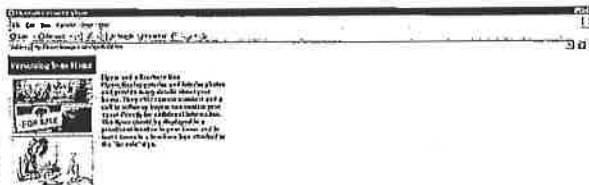
1. This is not a license. No reproduction rights are granted or implied herein. Rights to reproduce an image may only be acquired subject to the terms of a written license from Masterfile.
2. If this Claim Invoice is issued pursuant to a prior transaction between the parties, refer to the "Terms of Loan" and/or the "General Terms and Conditions of Invoice/License" set forth in separate documents previously delivered to the client.
3. This invoice is due and payable upon receipt. Interest of 2% per month will be charged after 30 days.
4. This invoice is subject to the laws of the Province of Ontario. Jurisdiction shall be in the municipality of Metropolitan Toronto.

Transaction Details

Report Data: 440002

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
Country: United States
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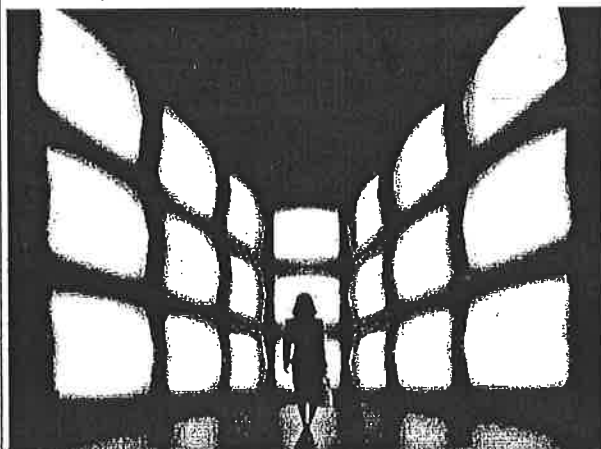
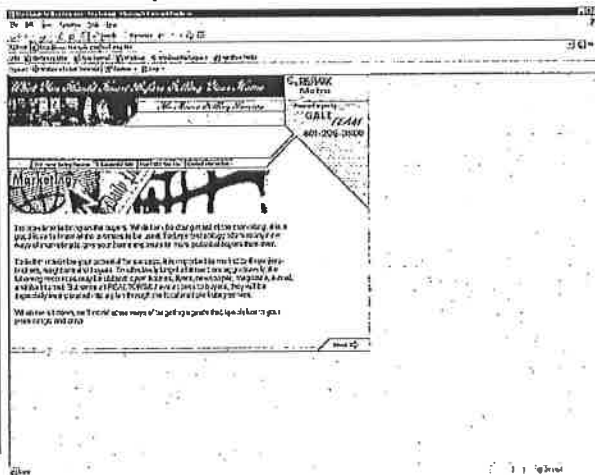
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Transaction Details

Report Data: 440003

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
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Tel: 877-898-9502
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Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00018138****Screen Capture**

Transaction Details

Report Data: 440005

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

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 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
 Country: United States
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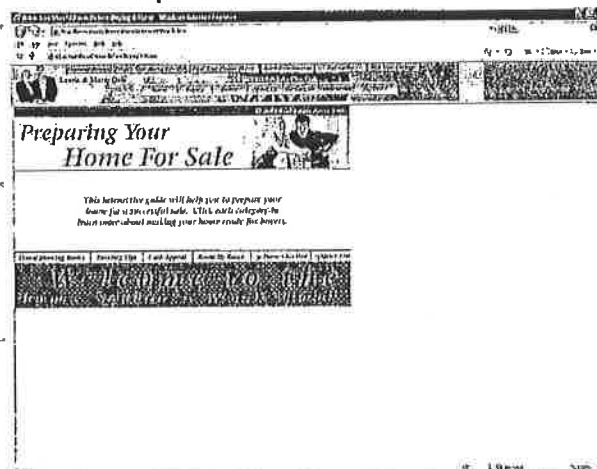
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Fax:

Catalog Image No. 700-00039068

Screen Capture



Transaction Details

Report Data: 440004

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Address 1533 Murray Holladay Road
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 Tel: 877-898-9502
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Country: United States
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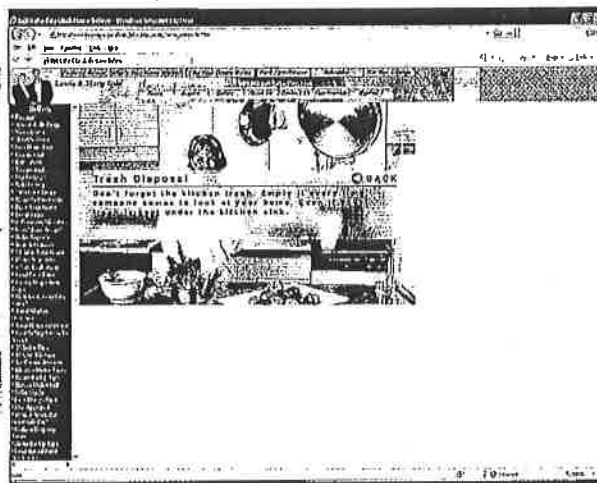
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Transaction Details

Report Data: 440008

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Transaction Details

Report Data: 440009

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

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Address 1533 Murray Holladay Road
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 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States

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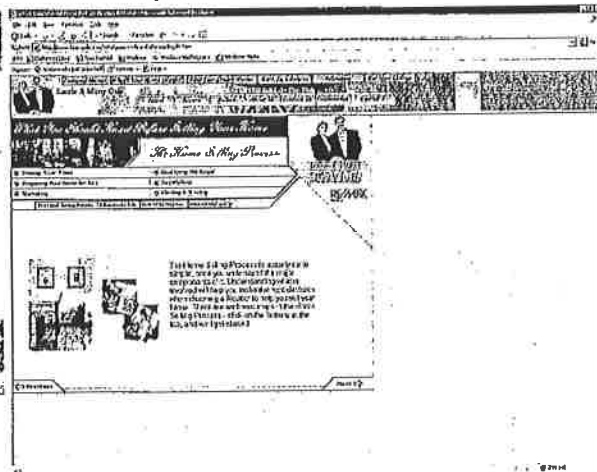
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Transaction Details

Report Data: 440017

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

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 Email: marty.gale@remax.net

Country: United States

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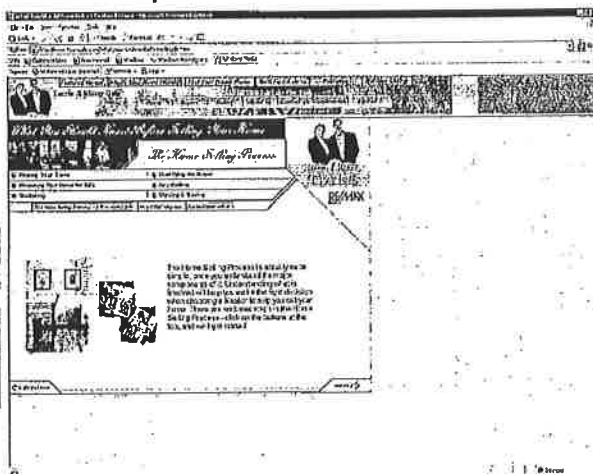
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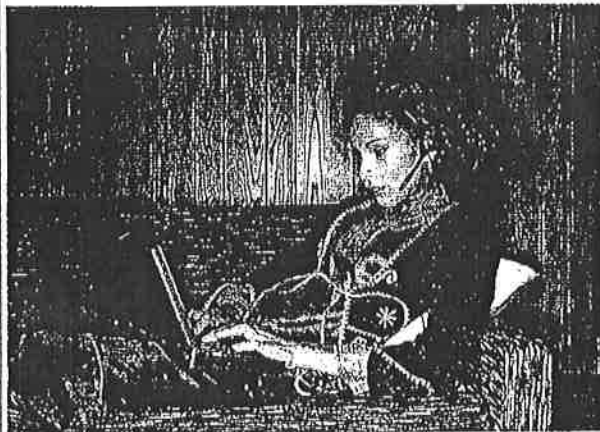
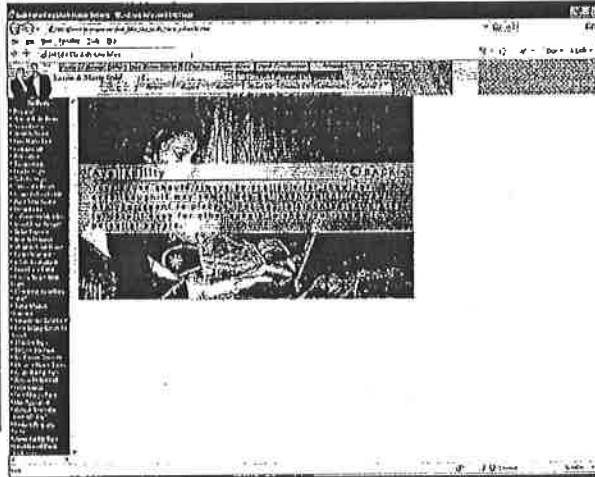


Transaction Details

Report Data: 440018

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
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Transaction Details

Report Data: 440007

Name: Laurie & Marty Gale

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Contact Details:

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 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
 Country: United States
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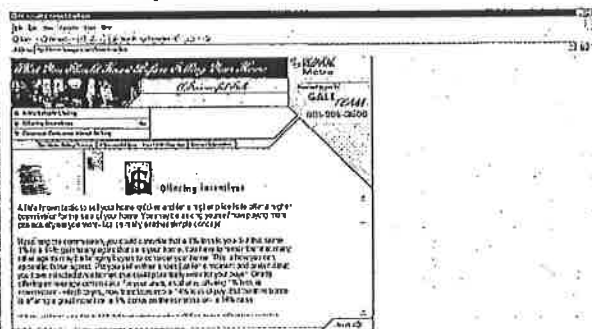
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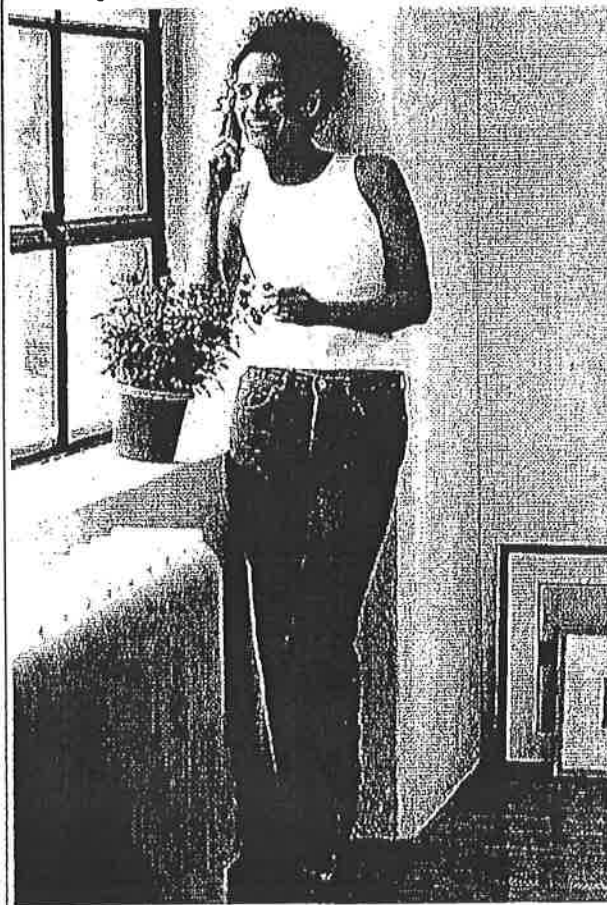
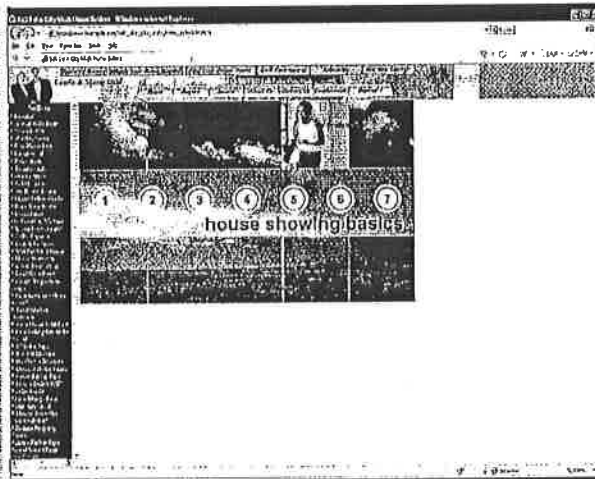


Transaction Details

Report Data: 440010

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
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 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
Country: United States
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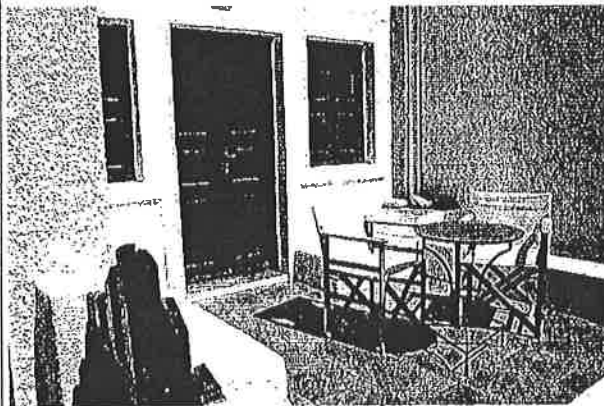
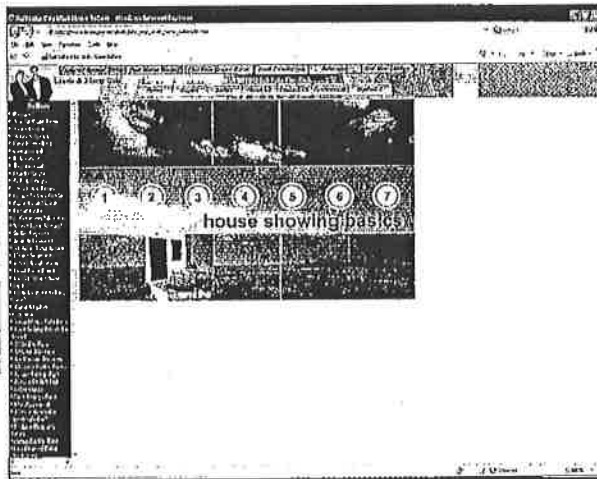
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Report Data: 440011

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

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 Salt Lake City, UT 84117
 Tel: 877-898-9502
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 Fax: 877-680-9278
 Email: marty.gale@remax.net

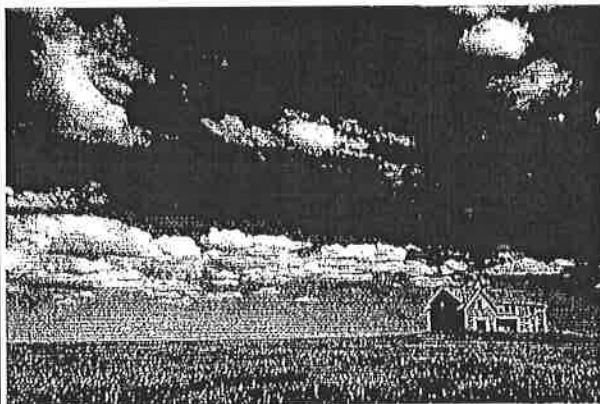
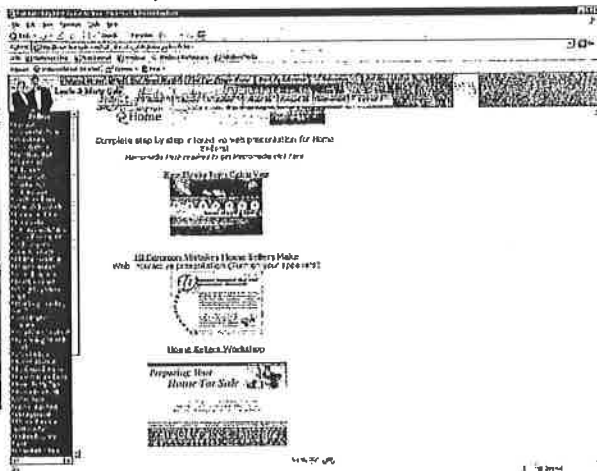
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Report Data: 440020

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
Country: United States
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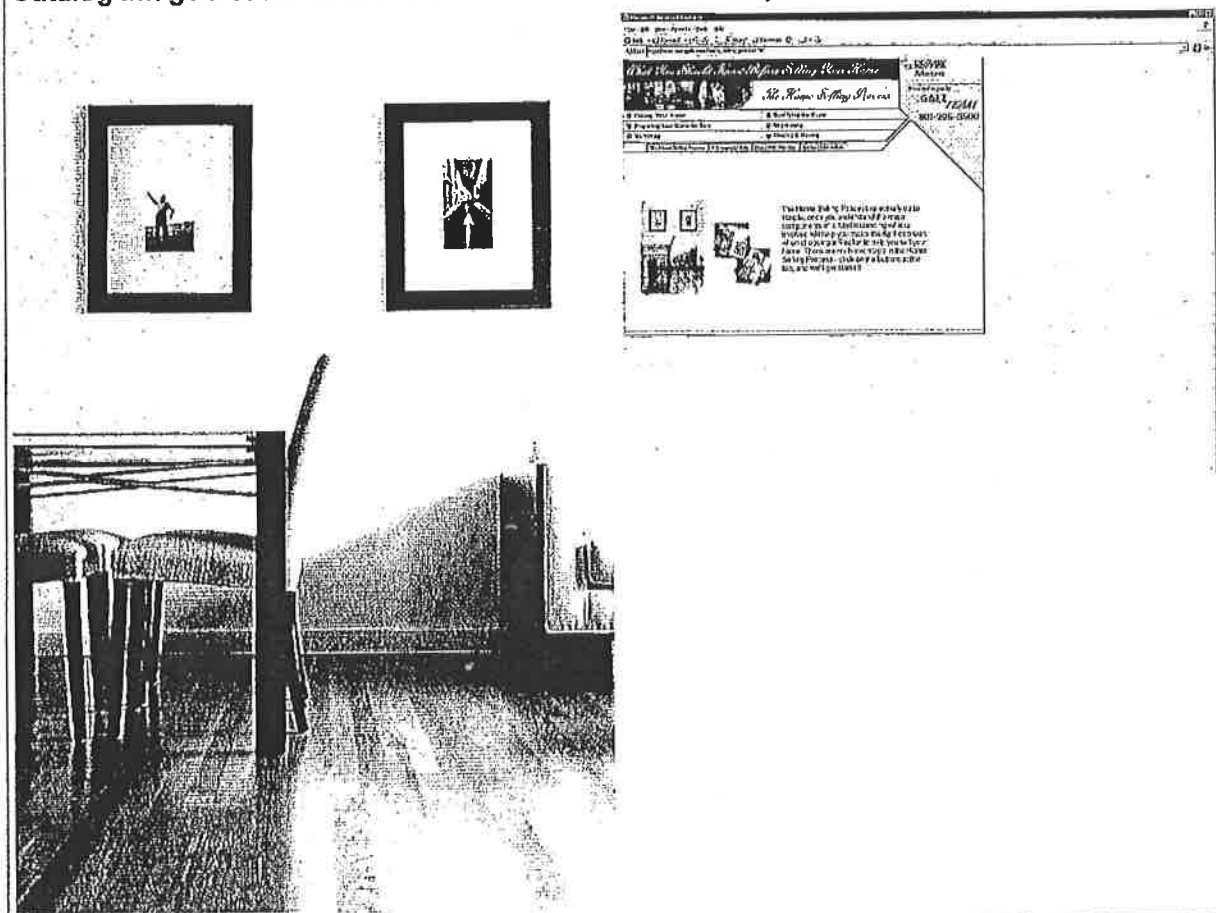
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Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
Country: United States
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Transaction Details

Report Data: 440013

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States

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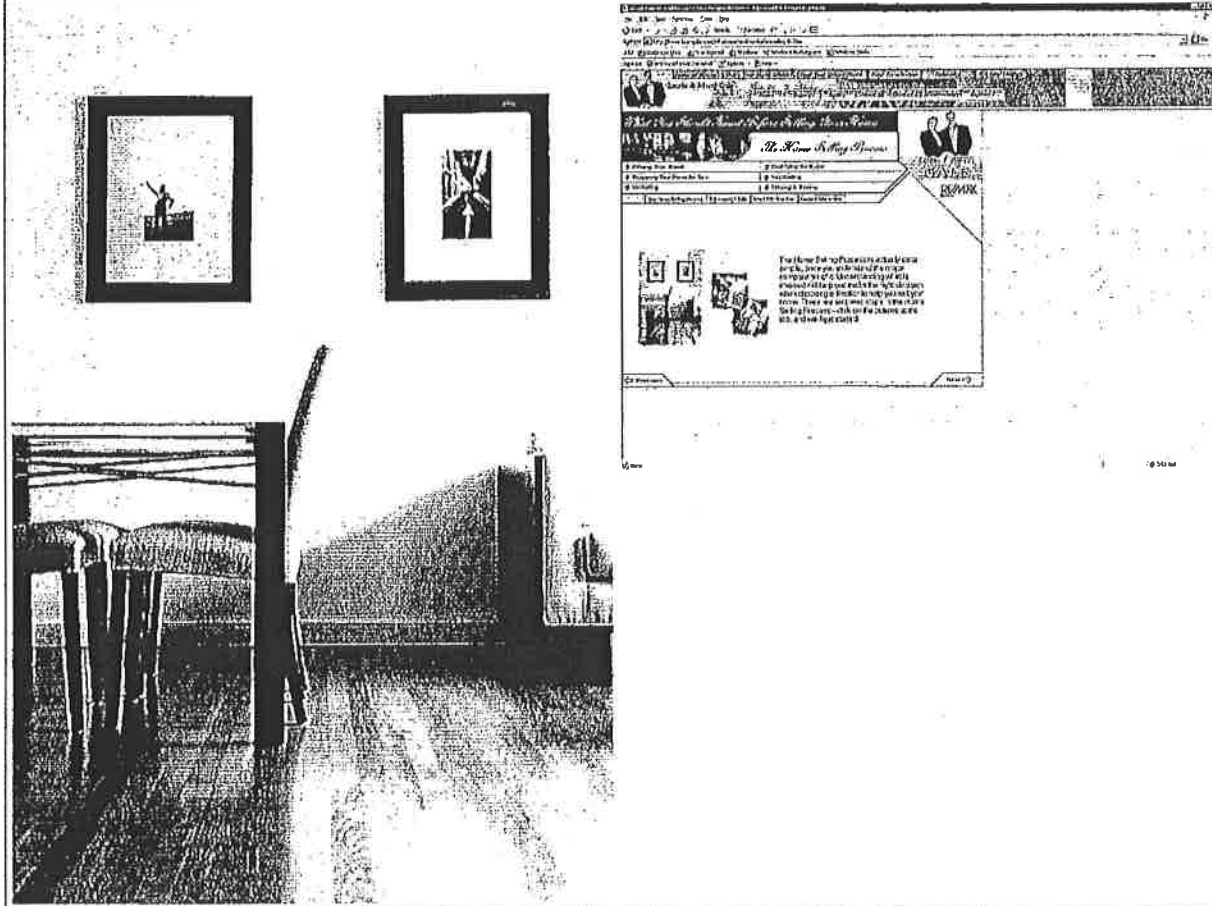
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Phone #2:

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Catalog Image No. 700-00069120

Screen Capture

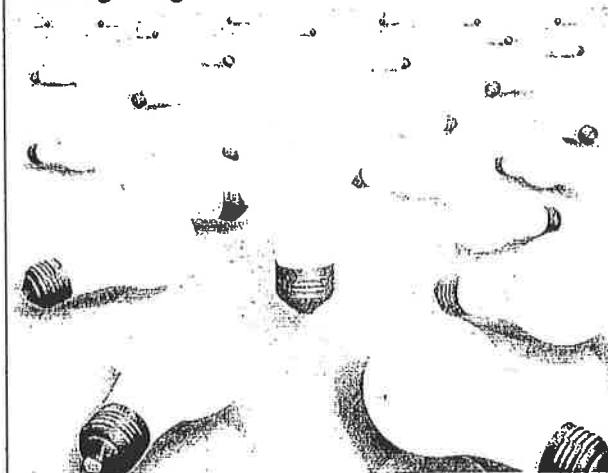
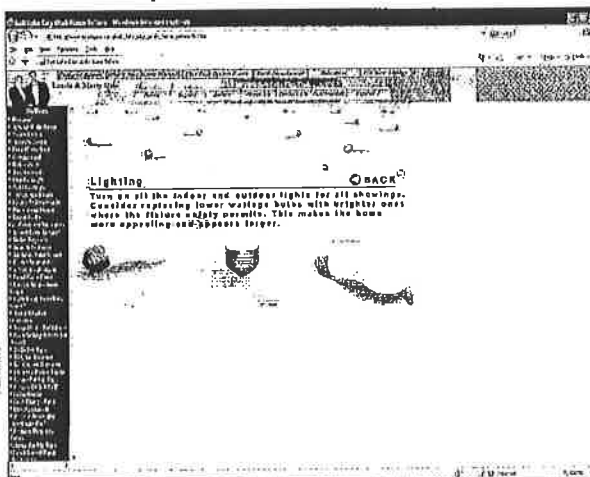


Transaction Details

Report Data: 440014

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

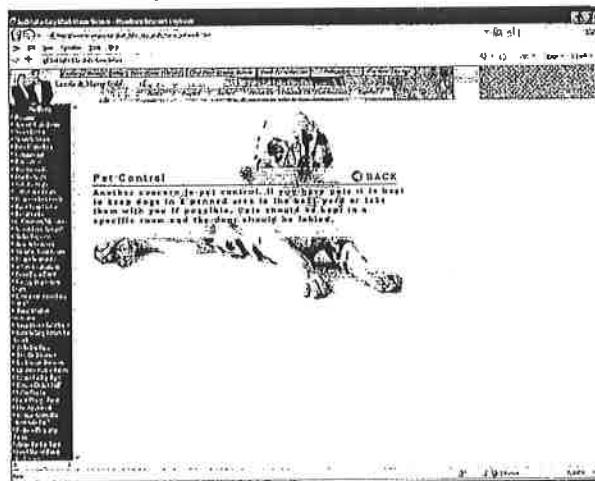
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Transaction Details

Report Data: 440015

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

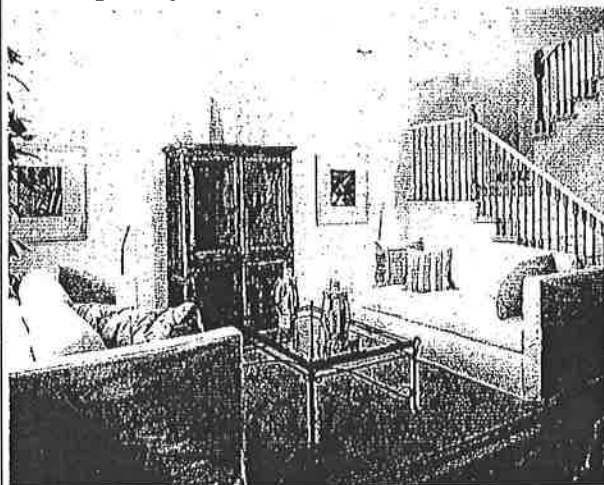
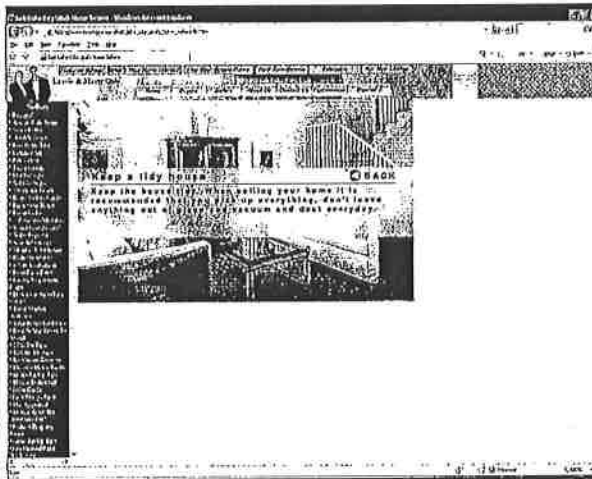
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Transaction Details

Report Data: 440021

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

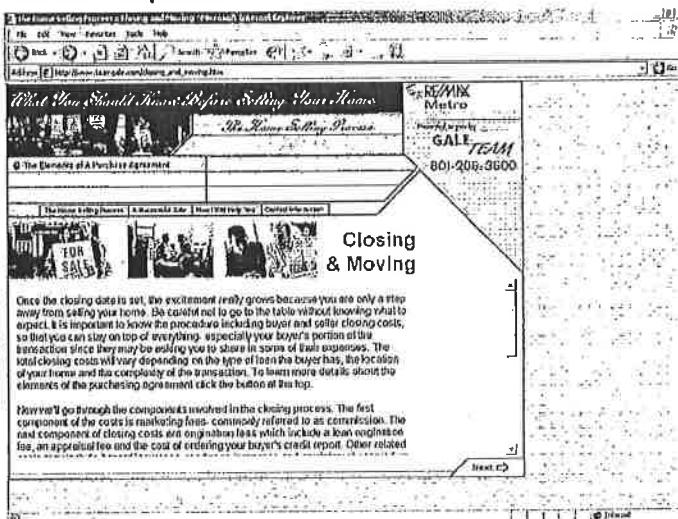
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*Transaction Details***Report Data:****Name:** Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00024739**

700-024739 © MTPA Stock / Masterfile www.masterfile.com

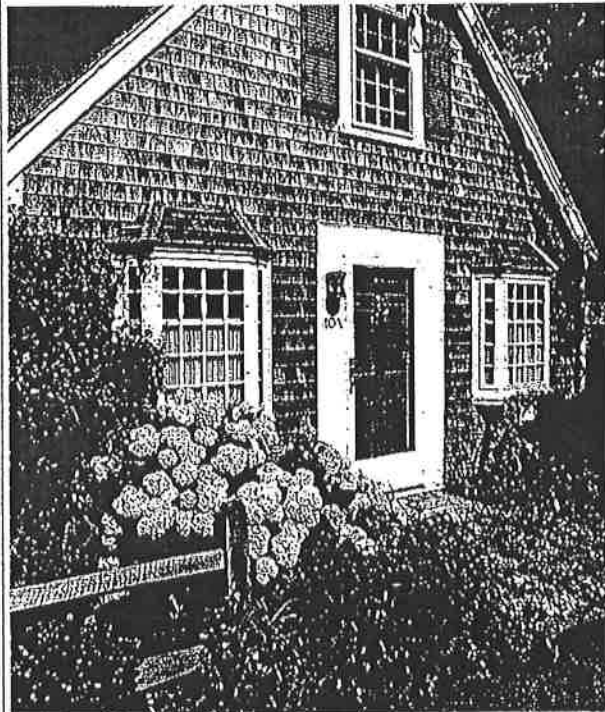
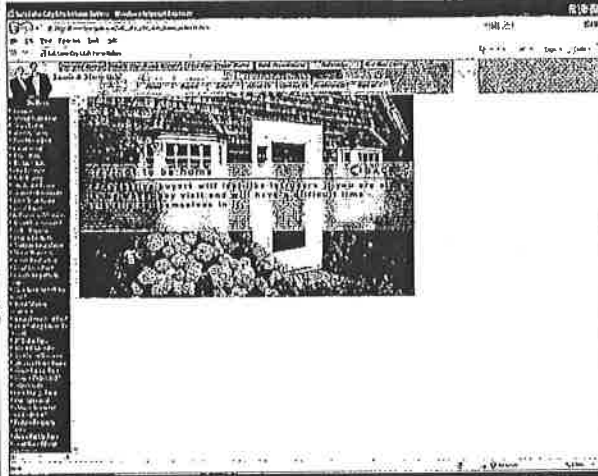
Screen Capture

Transaction Details

Report Data: 440026

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00057029****Screen Capture**

Transaction Details

Report Data: 440032

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States

More Data:

Phone #1:

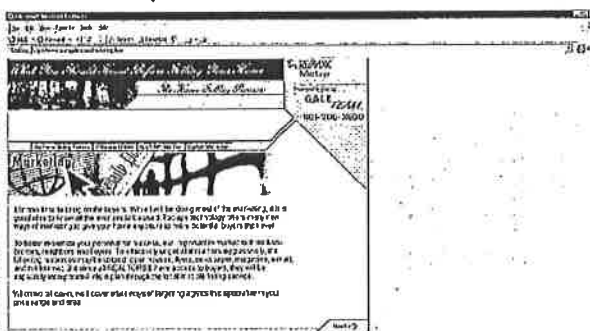
Phone #2:

Fax:

Catalog Image No. 700-00062640



Screen Capture



Transaction Details

Report Data: 440033

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net
 Country: United States
 More Data:

Phone #1:

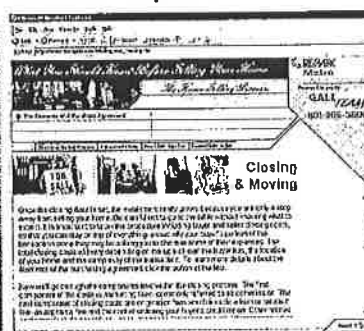
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Fax:

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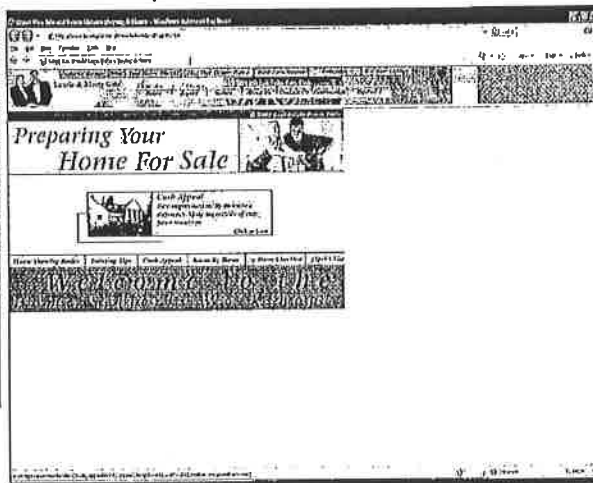


Transaction Details

Report Data: 440025

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00068371****Screen Capture**

Transaction Details

Report Data: 440031

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States

More Data:

Phone #1:

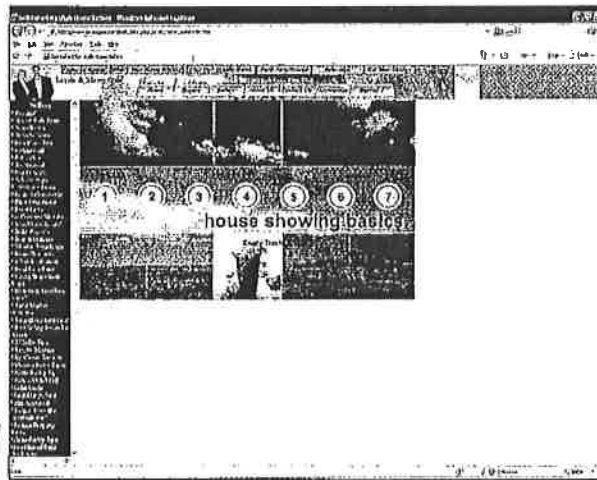
Phone #2:

Fax:

Catalog Image No. 700-00071900



Screen Capture

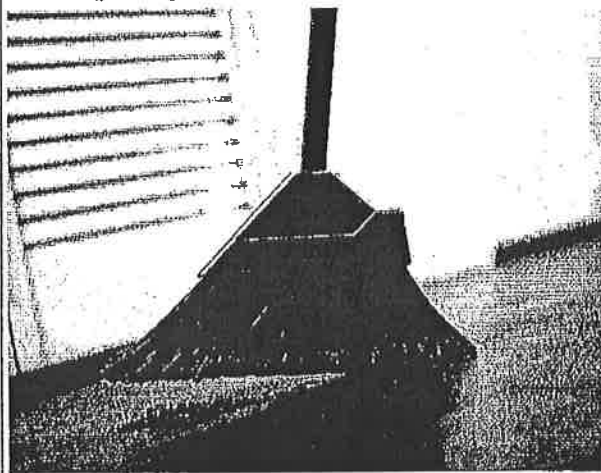
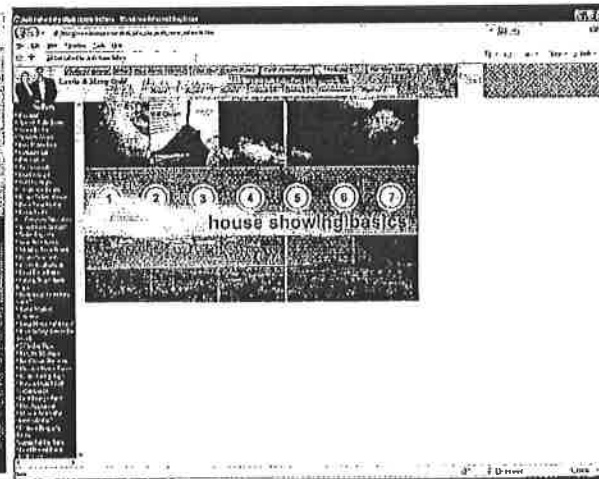


Transaction Details

Report Data: 440022

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00072298****Screen Capture**

Transaction Details

Report Data: 440023

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States

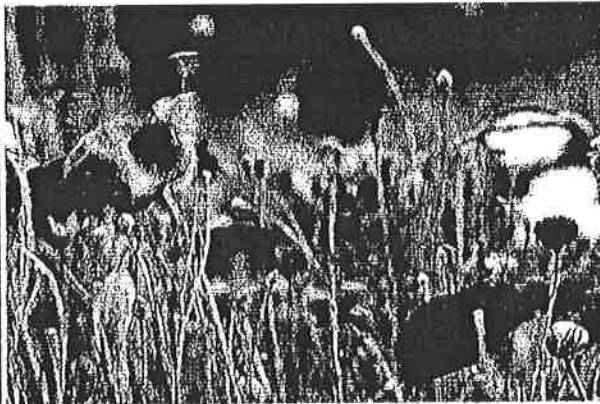
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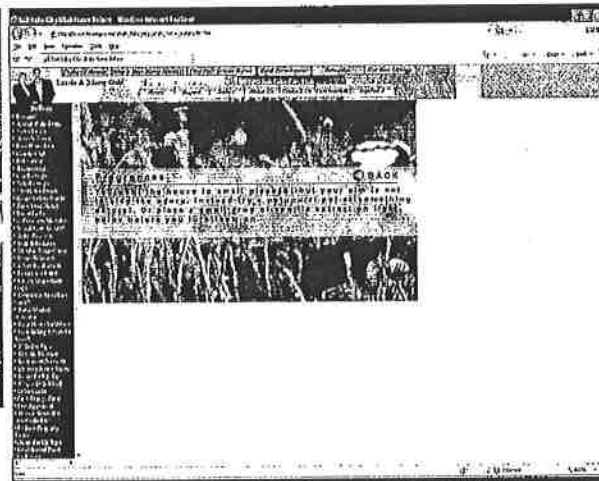
Phone #2:

Fax:

Catalog Image No. 700-00075424



Screen Capture



Transaction Details

Report Data: 440035

Name: Laurie & Marty Gale

Home Page: <http://www.teamgale.com/>

Contact Details:

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States

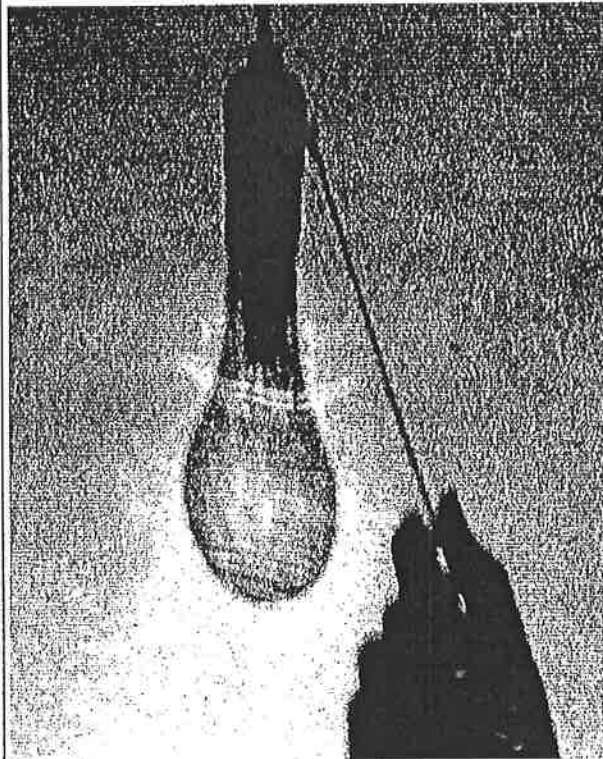
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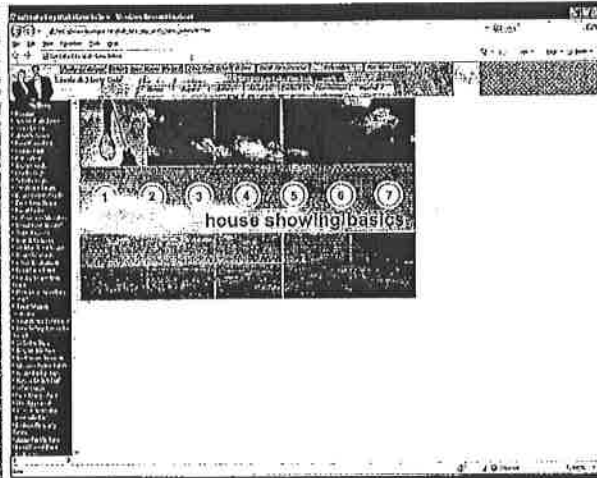
Phone #2:

Fax:

Catalog Image No. 700-00076323



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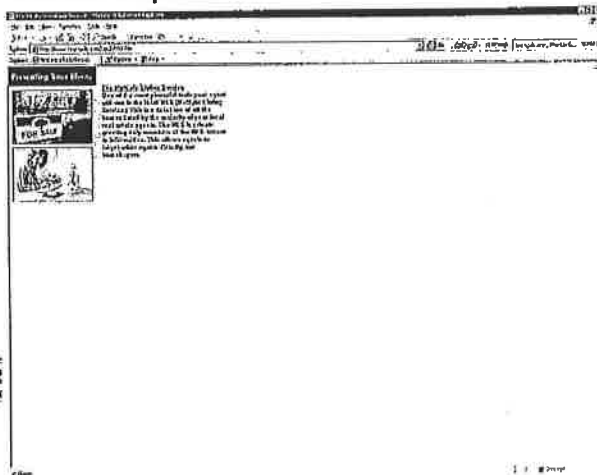


Transaction Details

Report Data: 440024

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

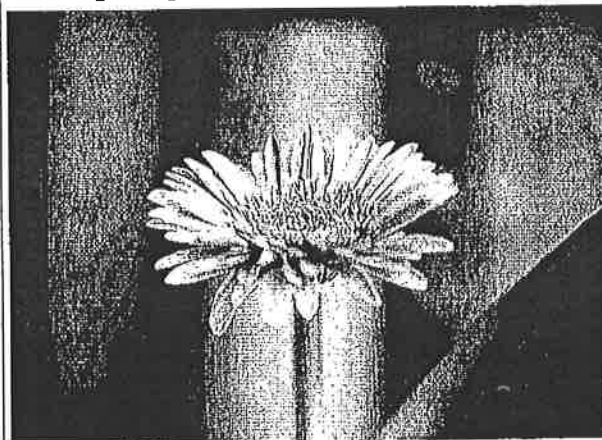
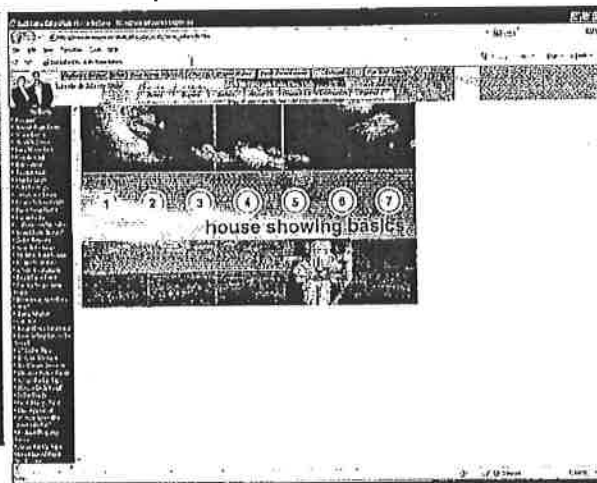
Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00077855****Screen Capture**

Transaction Details

Report Data: 440036

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

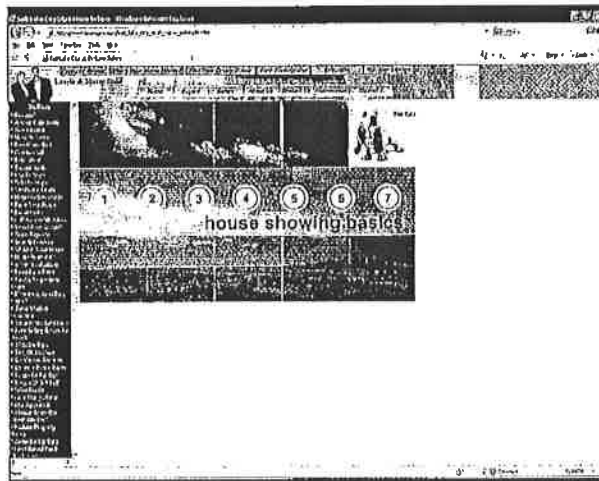
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Transaction Details

Report Data: 440037

Name: Laurie & Marty Gale**Home Page:** <http://www.teamgale.com/>**Contact Details:**

Address 1533 Murray Holladay Road
 Salt Lake City, UT 84117
 Tel: 877-898-9502
 Tel: 801-277-3500
 Fax: 877-680-9278
 Email: marty.gale@remax.net

Country: United States**More Data:****Phone #1:****Phone #2:****Fax:****Catalog Image No. 700-00083909****Screen Capture**



FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

Mail: P.O. Box 727
Memphis, TN 38194-4643
Telephone: 901-369-3600

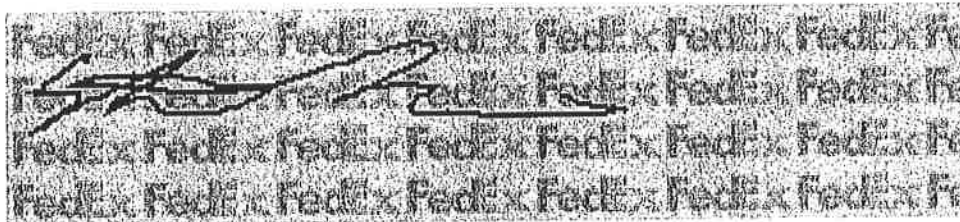
March 30, 2009

Dear Customer:

The following is the proof-of-delivery for tracking number **864299194250**.

Delivery Information:

| | | | |
|-----------------------|-------------------|---------------------------|---|
| Status: | Delivered | Delivery location: | 1533 MURRAY HOLLADAY RD SALT LAKE CITY, UT 84117 |
| Signed for by: | S.MORSON | Delivery date: | Mar 27, 2009 09:37 |
| Service type: | Priority Envelope | | |



Shipping Information:

| | | | |
|-------------------------|--------------|-------------------|--------------|
| Tracking number: | 864299194250 | Ship date: | Mar 26, 2009 |
| | | Weight: | 0.5 lbs. |

Recipient:
MARTY GALE
GALE TEAM
1533 MURRAY HOLLADAY ROAD
SALT LAKE CITY, UT 84117 US

Shipper:
MASTERFILE STOCK IMAGE LIBRARY
3 CONCORDE GATE FL 4TH
3 CONCORDE GATE FL 4TH
NORTH YORK, ON M3C3N7 CA

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339

Exhibit B

2. The Gale Team objects to Masterfile's discovery requests to the extent that they seek information protected against disclosure by the attorney/client privilege, the work product doctrine, or any other privilege or confidentiality provided for by law. The Gale Team construes each discovery request not to seek any such objectionable information.

3. The Gale Team objects to Masterfile's discovery requests to the extent that they ask for information that is outside of the possession or control of The Gale Team, that is in Masterfile's possession, that is substantially as easily available to Masterfile as to The Gale Team, that is publicly available, or that is otherwise available to Masterfile Corporation.

4. The Gale Team objects to Masterfile's discovery requests to the extent that they are overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

5. The Gale Team objects to Masterfile's discovery requests to the extent that they call for speculation.

6. The Gale Team specifically reserves the right to introduce at trial all evidence including evidence which is presently known to them but not deemed material or not known to them, and/or which is discovered subsequent to the date of these Responses, and reserves the right to amend these Responses without motion at any time. All of the Responses contained herein are based only on the information and documents presently available to The Gale Team at this stage in the litigation and discovery process. The Gale Team anticipates that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to known facts, and establish additional and different factual and legal conclusions, all

of which may lead to additions to, changes in, and/or variations from the statements set forth below.

Each of the foregoing general objections is incorporated into each response below.

SECOND SET OF REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that images which look identical to each of the Masterfile images at issue in this case (Masterfile image codes: 700-00008231, *et al.*) have appeared on YOUR WEBSITE.

ANSWER: Admit

REQUEST NO. 2: Admit that images which look substantially similar to each of the Masterfile images at issue in this case (Masterfile image codes: 700-00008231, *et al.*) have appeared on YOUR WEBSITE.

ANSWER: Admit.

SECOND SET OF INTERROGATORIES

INTERROGATORY NO. 1: If YOU do not unequivocally admit Masterfile's Request for Admission No. 1, above, DESCRIBE IN DETAIL the factual basis for YOUR failure to do so, and IDENTIFY all differences YOU claim exist between each of Masterfile's images (Masterfile image codes: 700-00008231, *et al.*) and similar images that have appeared on YOUR WEBSITE.

ANSWER: No response required.

INTERROGATORY NO. 2: If YOU do not unequivocally admit Masterfile's Request for Admission No. 2, above, DESCRIBE IN DETAIL the factual basis for YOUR failure to do so, and IDENTIFY all differences YOU claim exist between each of Masterfile's images

(Masterfile image codes: 700-00008231, *et al.*) and similar images that have appeared on YOUR WEBSITE.

ANSWER: No response required.

INTERROGATORY NO. 3: DESCRIBE IN DETAIL the use of all of the images on YOUR WEBSITE which are similar to the images at issue in this case (Masterfile image codes: 700-00008231, *et al.*), INCLUDING when YOUR WEBSITE was created, when each of the images was posted on YOUR WEBSITE, and when and how each of the images was removed from YOUR WEBSITE.

ANSWER: Subject to and without waiving their general objections, Defendants answer that Gale Services P.C. purchased a completed presentation from Real Estate Power Tools in March 2004. Real Estate Power Tools uploaded the presentation to www.galeteam.com in April 2004. Real Estate Power Tools protected the content of the presentation, and the Defendants did not have any opportunity to alter the presentation, including any opportunity add or remove the Images from the presentation. Upon notice from Masterfile of its allegation of copyright infringement, Gale Services P.C. contacted Real Estate Power Tools and requested that the identified images be removed from www.galeteam.com. Real Estate Power Tools removed the images pursuant to the request from Gale Service P.C.

SECOND SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: If YOU do not unequivocally admit Masterfile's Requests for Admission Nos. 1 and 2 above, produce all DOCUMENTS EVIDENCING any differences YOU claim exist between similar images that were on YOUR

WEBSITE and the Masterfile images at issue in this case (Masterfile image codes: 700-00008231, *et al.*).

ANSWER: No response required.

REQUEST FOR PRODUCTION NO. 2: Produce all DOCUMENTS that support or relate to YOUR answer to Masterfile's Interrogatory No. 3 above.

ANSWER: Defendants will produce all properly responsive documents at a mutually convenient time and location.

DATED this 18th day of June, 2010.

JONES WALDO HOLBROOK & McDONOUGH PC

/s/ Billie J. Siddoway

By: Andrew G. Deiss

Billie J. Siddoway

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of June, 2010, a true and correct copy of the foregoing was cause to be delivered by electronic mail to the following:

Wesley D. Felix
Nicole A. Skolout
HOWREY LLP
170 South Main Street, Suite 400
Salt Lake City, Utah 84101

/s/ Billie J. Siddoway

Exhibit 2

Wesley D. Felix (6539)
Amber M. Mettler (11460)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
Telephone: 801.257.1900
Facsimile: 801.257.1800
Email: wfelix@swlaw.com
amettler@swlaw.com

Attorneys for Plaintiff Masterfile Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

MASTERFILE CORPORATION,

Plaintiff,

vs.

MARTIN GALE, d/b/a THE GALE TEAM;
LAURIE GALE, d/b/a THE GALE TEAM;
and GALE SERVICES, P.C., d/b/a THE
GALE TEAM,

Defendants.

**DECLARATION OF DANIEL B.
POLLACK**

Case No. 2:09-cv-966

Honorable Dee Benson

I, Daniel B. Pollack, declare as follows:

1. I am over the age of 18 years, a resident of Toronto, Ontario, Canada, and am fully competent in all respects to testify regarding the matters set forth herein.
2. I am employed by Plaintiff Masterfile Corporation ("Masterfile") as general counsel. I have held this position since September 2010.
3. I have personal knowledge of the facts set forth in this Declaration, except for those facts stated on information and belief.
4. In October 2009, Masterfile retained Howrey LLP ("Howrey"), located in Salt Lake City, Utah, to pursue Defendants and protect Masterfile's copyrights in this matter.
5. After the Howrey firm dissolved, Masterfile retained Terry Jessop & Bitner, also located in Salt Lake City, to continue to prosecute this litigation.
6. Subsequently, in February 2013, Masterfile retained Snell & Wilmer, LLP, also located in Salt Lake City, Utah, to continue to prosecute this litigation.
7. According to the records of Masterfile, which are maintained in the ordinary course of business in connection with this matter's file, Howrey billed Masterfile a total of \$26,711.00 in attorneys' fees, and \$925.45 in costs associated with this matter. The attorneys from Howrey who worked on this matter included Nicole A. Skolout, Aida Neimarlija, and Wesley Felix, along with a paralegals, Shannon Macauley and Karmen Schmid. For the work of these attorneys and paralegals, Howrey charged \$400, \$410 and \$460 per hour for Ms. Skolout, \$280 per hour for Ms. Neimarlija, and \$175 per hour for Ms. Macauley and Ms. Schmid. Mr. Felix, a partner at the Howrey firm, did not bill any of the time that he spent on this matter to Masterfile.

8. According to the records of Masterfile, which are maintained in the ordinary course of business in connection with this matter's file, Terry, Jessop & Bitner billed Masterfile a total of \$3,045.00 in attorneys' fees, and \$104.12 in costs associated with this matter. The attorney from Terry Jessop & Bitner who worked on this matter was Karmen Schmid, whose work was billed at the rate of \$175 per hour.

9. Since being retained, Snell & Wilmer has billed Masterfile a total of \$3,217.50 in attorneys' fees associated with this matter. The attorneys from Snell & Wilmer who worked on this matter are Amber M. Mettler and Mr. Felix. Snell & Wilmer charges Masterfile \$385.00 per hour for Mr. Felix's services and \$325.00 per hour for Ms. Mettler's services.

10. A breakdown of all fees, including a reasonably detailed description of the time spent and the work performed, is attached hereto as Exhibit A.

11. Accordingly, Masterfile has incurred a total of \$32,973.50 in attorneys' fees associated with prosecuting this litigation.

12. In addition, Masterfile has incurred costs of \$1,029.57. A breakdown of all costs is attached hereto as Exhibit B.

13. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

DATED this 1st day of April, 2013.



Daniel B. Pollack

EXHIBIT A: Summary of Attorneys' Fees**Howrey LLP**

| Attorney/ Paralegal Name | Summary of Work Performed | Hours | Hourly Rate | Total |
|---------------------------------|--|--------------|--------------------|-----------------|
| Aida Neimarlija | Prepare complaint ; initial disclosures; communications with opposing counsel | 2 | \$280 | \$560 |
| Nicole Skolout | Communications with opposing counsel and client; prepare discovery requests | 3.8 | \$400 | \$1,520 |
| Nicole Skolout | Prepare motion for partial summary judgment on infringement | 3.2 | \$410 | \$1,312 |
| Nicole Skolout | Prepare motion for partial summary judgment on infringement; prepare opposition to defendant's motion for partial summary judgment; prepare reply in support of motion for partial summary judgment; prepare pre-trial disclosures; prepare for and attend summary judgment hearing; communications with opposing counsel and client | 45.9 | \$460 | \$21,114 |
| Shannon Macauley | Review discovery requests and evidence of defendant's use of Masterfile's images; review and check citations in motion for partial summary judgment and opposition to defendant's motion for partial summary judgment | 10.8 | \$175 | \$1,890 |
| Karmen Schmid | Check citations in reply brief in support of motion for partial summary judgment | 1.8 | \$175 | \$315 |
| Total Fees: | | | | \$26,711 |

Terry Jessop & Bitner

| Attorney/ Paralegal Name | Summary of Work Performed | Hours | Hourly Rate | Total |
|---------------------------------|--|--------------|--------------------|--------------|
| Karmen Schmid | Prepare motion for summary judgment on damages; communications with opposing counsel and client | 17.4 | \$175 | \$3,045 |

Snell & Wilmer

| Attorney/ Paralegal Name | Summary of Work Performed | Hours | Hourly Rate | Total |
|---------------------------------|---|--------------|--------------------|--------------------|
| Amber M. Mettler | Prepare motion for summary judgment on damages; communications with client | 9.90 | \$325 | \$3,217.50 |
| Wesley Felix | Prepare motion for summary judgment on damages; communications with client | | \$380 | |
| Total Fees | | | | \$32,973.50 |

EXHIBIT B: Summary of Costs**Howrey LLP**

| Description | Amount |
|-------------------------------------|-----------------|
| Filing fee for Complaint | \$350.00 |
| Service of Complaint (mileage fees) | \$20.35 |
| Photocopies | \$224.90 |
| Lexis legal research | \$330.20 |
| | |
| Total | \$925.45 |

Terry Jessop & Bitner

| Description | Amount |
|------------------------------------|-------------------|
| Westlaw and related legal research | \$102.32 |
| Photocopies | \$1.80 |
| | |
| Total | \$104.12 |
| | |
| Total Costs | \$1,029.57 |

Exhibit 3

Wesley D. Felix (6539)
Amber M. Mettler (11460)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
Telephone: 801.257.1900
Facsimile: 801.257.1800
Email: wfelix@swlaw.com
amettler@swlaw.com

Attorneys for Plaintiff Masterfile Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

MASTERFILE CORPORATION,

Plaintiff,

vs.

MARTIN GALE, d/b/a THE GALE TEAM;
LAURIE GALE, d/b/a THE GALE TEAM; and
GALE SERVICES, P.C., d/b/a THE GALE
TEAM,

Defendants.

DECLARATION OF WESLEY D. FELIX

Case No. 2:09-cv-966

Honorable Dee Benson

I, WESLEY D. FELIX, declare as follows:

1. I am over the age of 18 years, a resident of Salt Lake City, Utah, and am fully competent in all respects to testify regarding the matters set forth herein.
2. I am an attorney, a member in good standing of the Utah State Bar, and admitted to practice law before all federal and state courts in the State of Utah. Snell & Wilmer, L.L.P. ("Snell & Wilmer") and I are counsel for Plaintiff Masterfile Corporation ("Masterfile") in this matter. Prior to joining Snell & Wilmer, I was an attorney at Howrey LLP ("Howrey") until January 2011, which served as counsel for Masterfile in this matter until 2011. I have personal knowledge of the facts set forth herein.
3. I have personal knowledge of the facts set forth in this Declaration, except for those facts stated on information and belief.
4. I have reviewed the hourly rates and bills by Masterfile's outside counsel in this matter and believe they are reasonable based on the attorneys' skills, experience, and reputations. Further, the work performed by Masterfile's attorneys during the course of prosecuting this litigation was necessary and appropriate.
5. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

DATED this 2nd day of April, 2013.



Wesley D. Felix